

# Congress of the United States

Washington, DC 20515

August 20, 2009

Members of the California State Senate  
State Capitol  
Sacramento, CA 95814

## **Re: Passage of Assembly Bill 1196 (Blumenfeld) – Enhancing the California False Claims Act**

Dear Senator:

We are writing to strongly urge your passage of Assembly Bill 1196 (Blumenfeld) now pending in the California Legislature to enhance California's ability to combat fraud and protect taxpayers through the False Claims Act.

We are taking this unusual step in contacting you because, despite our different political perspectives on many issues, we are in strong agreement that fighting fraud is a bipartisan battle, that the False Claims Act provides one of the most effective tools for recovering taxpayer funds lost to unscrupulous contractors who knowingly defraud the government, and that this bill is important for California.

With our nation spending hundreds of billions of dollars to revitalize our faltering economy, now is the time to plug the loopholes in the False Claims Act and both clarify and update the law to ensure that it reaches modern fraud schemes that threaten our public treasury. That is why we worked together this year to strengthen the federal False Claims Act to protect taxpayers from both direct and indirect fraudulent claims. By passing Assembly Bill 1196, California would provide state conformity with the bipartisan fraud-fighting reforms reflected in the recently enacted Fraud Enforcement Recovery Act of 2009.

The federal False Claims Act was first used by President Lincoln to enlist private individuals in uncovering fraud against the government, providing incentives in the form of a share of the government's recovery, currently at least 15 percent. We have been disappointed to see the taxpayer protection law diluted by the courts over the past two decades. We joined together in 1986 to revive the law during the Reagan Administration and now we have again joined together again to protect the effectiveness of the original law.

In 1986, the year before Congress revitalized the False Claims Act, the U.S. Department of Justice recovered just \$54 million under the law. Between 1986 and 2008, \$21.6 billion has been recovered under the False Claims Act, including \$13.7 billion as a result of qui tam or whistleblower actions. In California, the state Attorney General has reported over \$1 billion being recovered for taxpayers in the past decade under the state False Claims Act.

The most recent federal reforms close loopholes created by some courts that were leaving billions of dollars vulnerable to fraud. We restored the intent of Congress to have the federal False Claims Act protect all government funds or property, regardless of whether the fraudulent claim is submitted by an unscrupulous contractor to the government, a subcontractor who submits a fraudulent claim to the general contractor, or if the government is defrauded as a result of an agent administering taxpayer funds. By conforming California law to the federal False Claims Act as proposed by Assembly Bill 1196, the state would prevent recent court rulings, such as the U.S. Supreme Court decision in *Allison Engine*, from also weakening California's ability under state law to recover taxpayer dollars lost to fraud when the government uses agents and other third parties to administer government programs and contracts.

Assembly Bill 1196 proposes amendments to the California False Claims Act that appears to conform with enhancements made to federal law to protect taxpayer funds whether the fraudulent claim was submitted directly by a government contractor or indirectly by subcontractors or agents; apply penalties per violation as the federal law does; and adopt procedural changes to protect the public interest by ensuring that any settlement of a false claims complaint is approved by a court and reviewed by the state Attorney General.

The cost of fraud against the government extends beyond dollars and cents. It includes the erosion of public confidence in the government's ability to efficiently and effectively manage its programs. By keeping our false claims laws strong and effective, we can enlist private individuals and extend our resources in the fight against fraud and allow assist government in protecting its limited resources.

Additionally, through the Deficit Reduction Act of 2005, Congress has sought to enlist states in the fight against fraud. States that enact a false claims law as tough or tougher than the federal False Claims Act are rewarded with a 10 percent bonus in Medicaid recoveries. By adopting the changes proposed by Assembly Bill 1196, California would be conforming state law to the enhanced federal False Claims Act.

We believe that Assembly Bill 1196 will be a boon to California taxpayers and we encourage you to support this bill that will strengthen the California False Claims Act.

Sincerely,

  
HOWARD L. BERMAN  
Member of Congress

  
DANIEL LUNGREN  
Member of Congress